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DOI : -**ENVIRONMENTAL POLLUTION BY CORPORATE CRIMINAL ACTION
PHENOMENON**

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Abstract

The problem of environmental pollution is increasingly in the spotlight and globalized. The system adopted in the criminal law of environmental pollution is a system of criminal responsibility based on mistakes. Corporate crime can emerge as economic development advances. Corporate crime is not new, but something that has happened frequently and has changed from time to time. Currently, corporations are included in the category of legal subjects so that they can be subject to criminal and civil sanctions. The doctrinal legal research used has the purpose of analyzing environmental regulations related to corporations that pollute. UU no. 32/2009 Environmental Protection and Management as a legal umbrella mentions the unitary environment of space with all objects, styles, circumstances, and organisms, including humans and their behavior that affect nature itself, survival, livelihood and welfare of humans and other living creatures. Loss of environmental pollution is not only in one area but can spread to the surrounding area with a fantastic total loss value, this requires government firmness, especially in Indonesia which on the one hand tries to promote the economy and investment, but on the other hand requires legal instruments to maintain environment for sustainable development.

Keywords: Crime, Environmental Pollution, Environment, Crime, Corporation

A. BACKGROUND

The environment is a condition of nature and its contents that influence each other. The environment is an integral part of human life. The environment is a system in life. In this one living system there are the roles of humans. Referring to Law No. 11/2020 concerning Job Creation, Article 1 The environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living creatures.

The environment has a definition as everything that surrounds an organism and affects the development of life. Everything that is in the environment around us such as natural resources, namely water, soil, animals, plants, air, solar energy, and others. The existence of environmental pollution can cause environmental damage, threaten public health, threaten environmental sustainability, and decrease the carrying capacity of the environment. The environment consists of biotic and abiotic resources both of which are important for humans.

In order for environmental sustainability to be well maintained, a criminal law is also needed to regulate society in order to create order and provide sanctions to perpetrators of law violations. According to PPLH Law No. 32/2009 states: "Environment is the unity of space with all objects, styles, conditions, and organisms, including humans and their behavior that affect nature itself, survival, livelihood and welfare of humans and other living things." The existence of the criminal law on environmental pollution is a form of

state attention to the surrounding environment, so that we can prevent environmental pollution and damage the local environment.

Environmental problems are increasingly in the spotlight and globalized, environmental monitoring and processing are the determining factors for the success of environmental sustainability. The government, the trading community, business people, and all communities together must have a commitment to preserving the environment.

The system adopted in the criminal law on environmental pollution is a system of criminal responsibility based on mistakes made and adapted to the Criminal Code. The concept of "responsibility" in criminal law is a central concept known as the doctrine of guilt. The doctrine of error in Latin is called *mens rea*. *Mens rea* is based on the idea that actions cannot cause a person to be considered guilty, unless the person's thoughts are evil.

Criminal liability is defined as individual responsibility for the crime committed. Criminal liability is a method created by criminal law that serves to deter violations of the act of rejecting certain laws. In Sudarto's opinion, it is not enough to punish someone if that person has committed an unlawful act. Breaking the law is an unlawful act, but it fulfills the voice of sentencing the convict. The basis of punishment requires conditions, namely that people who commit acts against the law can be found guilty.

Errors are deviations from the truth or deviations from what has been determined. Furthermore, the error is a form of deviation from what is considered correct or a predetermined procedure (legality principle). Legality is the

principle of error which is a fundamental principle in criminal law. This principle of error has been recognized in Law No. 47 of 2009 Article 6 Paragraph (2) concerning "Judicial Power" which reads:

"No one can be sentenced to a crime, except if the Court, because of the valid evidence according to the law, is convinced that those who are considered to be responsible have been guilty of the acts that are accused of them".

A person who has a normal mental condition, is healthy, and has reason to distinguish between good and bad things is an embodiment of the ability to be responsible. The ability to be responsible is based on 2 factors: the will factor and the reason factor. Will is the ability of a person to adjust his actions with the awareness of something that is allowed or not allowed. While reason is a situation where a person is able to distinguish between permissible and prohibited actions.

According to Subekti and Tjitrosudibio, a corporation or what is called a corporation is an individual who is a legal entity. In addition, according to Jowitt's that corporation is a group or series of people who have legal rights and obligations and have different estimates of existence from one person from time to time. A corporation is known as a political body. Corporations have an illusory character that is different from their members.

Corporate crime can emerge as technology and economic activities advance. Corporate crime is not something new, but something that has happened quite often and has been changing from year to year. The development of the times and current technological advances are also followed by the development of crime and become more complex. In addition, corporate crimes in

civil law are legal entities; whereas in criminal law a corporation is a form of legal entity or non-legal entity (business entity not a legal entity/individual), which may take actions carried out by a group of people on behalf of a business entity with a specific purpose in violation of the law which can be subject to criminal sanctions.

The increasing number of corporations as a global impact creates attention to environmental pollution. Mining, industry, trade, utilization of other natural resources, and almost all business fields have the potential to pollute or damage nature or the environment. The reality that is happening today makes us aware that corporations are increasingly playing an important role in people's lives.

The principle of corporate responsibility in Indonesia is not regulated in the Criminal Code, but is regulated in a law with a special regulatory nature. Article 59 of the Criminal Code stipulates that a crime can be given to a person and an administrator who takes part in a crime. What is considered the perpetrators of crimes committed by corporations are all those who are the management of the corporation. However, corporations cannot be declared as perpetrators of criminal acts because those who have the position as suspects in the provisions of the Criminal Code are those who carry out real criminal actions, while corporations do not actually commit their actions. Based on the description above, the problem is how to regulate the corporation in the crime of environmental pollution and how is the responsibility of the corporation that has resulted in environmental pollution.

B. PROBLEM FORMULATION

The purpose of the formulation of this problem is to help the author to continue to do research in accordance with the purpose of the topic of discussion. Based on the background stated above, the formulation of

the problem that can be proposed in this study is: How is the responsibility of the corporation in the case of criminal acts of environmental pollution? The formulation of the problem taken is based on cases that have occurred, especially in Indonesia and more specifically corporate crimes in cases of river environmental pollution. The research method used is legal research/doctrinal research which aims to analyze environmental regulations related to corporations that pollute.

C. DISCUSSION

In April 2019, various online media, including Jabar.net, reported that a waste case came from PT Pindo Deli and Paper Mills. Secretary DLHK Karawang RD said five months later, the contamination occurred again at the same location. The Citarum Harum Sector 18 Task Force and the Karawang Environmental Agency reviewed this, liquid waste must be disposed of in a way that reduces the residue of hazardous materials. Waste must pass through a sewage treatment plant before being disposed of. The liquid waste is then usually placed in a special tank. "N" says PT. Pindo Deli Tiga is alleged to have violated Law no. 32/2009 on Environmental Protection and Management.

Environmental pollution can cause environmental damage, threaten the sustainability of society, threaten public health, disturb the comfort of the whole community, and decrease the carrying capacity of the environment; On the other hand, human survival is very dependent on both biotic and abiotic resources.

We strive to maintain the welfare and preservation of the environment, thus requiring laws/regulations that regulate the community in order to create order and comfort to ensnare perpetrators of law violations. According to PPLH Law No. 32/2009, which states that: "Environment is

the unity of space with all objects, styles, conditions, and organisms, including humans and their behavior that affect nature itself, survival, livelihood and welfare of humans and other living things."

The corporation comes from the Latin *corporare*. *Corporare* itself also comes from the word *corpus* which gives the body or makes up. From the word *corporatie* (Dutch) finally translated into Indonesian into a corporation. Satjipto R said that the corporation as an entity created by law. The legal entity he created consists of a "corpus" and an "animus" which is given by law, thus making the legal entity have a personality. Therefore, a legal entity is a legal creation, except for its creation, its death is also determined by law.

In addition, Sally S. Simpson, views corporate crime as part of a crime committed by certain people who misuse their answers for something that benefits themselves. As emphasized by Simpson, corporate crime is a type of white-collar crime. This view does not give meaning to corporate crime but becomes an important part in discussing crimes committed by corporations. That corporate crimes can occur simultaneously with crimes committed by people who abuse their positions. In other words, when a crime occurs in such a case, there is a corporate crime. Progress in this era, along with the rise of white-collar crime so that the progress of corporate business still requires good supervision, because it does not always have a positive impact on a country.

1. Corporations as the Cause of Environmental Crimes

Corporations are currently included as legal subjects in the form of PT, as a fictional entity (artificial person) which is equated with a person. Corporate crime seen from the form of the subject as well as the motive, can be qualified as a white-collar crime and is a criminal act or an organized crime. Not only that, corporate

crime is also a complex crime and is oriented towards financial gain. Corporations can be determined as perpetrators of criminal acts using guidelines for carrying out tasks or achieving company goals. Corporations can be linked as perpetrators if they are proven to have committed acts that violate the rules in the interest and achievement of the goals of an organization, and also includes employees in the company who actually take the actions concerned who do so of their own volition and contrary to the given rules.

To be able to determine a corporation as a criminal, it can be seen from the rights or authorities that exist in the legal entity. Corporations actually have the authority to regulate, control, and govern parties who in reality can commit criminal acts. In managing related to the environment, legal entities/corporations are responsible for regulating policies/steps that must be taken, namely:

- a. To systematically formulate policies in the environmental field;
- b. Develop a proper order of organizational structure and determine who is responsible for the implementation of the environmental policy
- c. Develop instructions or internal rules for the implementation of activities that disturb the environment, where it should also be noted that company employees know and understand the directions carried out by the company concerned.
- d. Financing or budgeting the costs of implementing policies in environmental management.

If the obligations above the legal entity or corporation do not or do not function properly, this can be a reason to

assume that the legal entity is not trying or not working hard (cautiously) in preventing or supervising the possibility that it is a prohibited act. . So that a legal entity can be determined as a perpetrator of environmental crime, it is necessary to pay attention to several things, namely:

- a. Is the case related to a criminal act where interference with protected interests is declared a crime?
- b. Which norms are related to behavior that disturbs the environment
- c. What is the nature, structure, and field of work originating from the legal entity.

Referring to the description, therefore contextually, an environmental crime is an act that is prohibited in the environmental law or other regulations related to it, in which the violation of the prohibition is threatened with a criminal by the authorized body. In this case, Rahmadi then emphasized that environmental crimes are orders and prohibitions of the law on legal subjects which if violated will be subject to criminal sanctions, this is to protect the environment.

2. Corporations as Actors of Environmental Crimes

Rhiti states that strict liability is an obligation that has long been recognized in civil law. The common law system initially developed from the case of *Rylands vs. Fletcher* in England in 1868. The doctrine of absolute responsibility has developed to be applied in various legal systems of other countries, and also in Indonesia, especially in environmental cases. In the Job Creation Law, the article is amended so that it reads: "Everyone whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or who poses a serious threat to the environment, is absolutely

responsible for the losses incurred. occurs from its business and/or activities". The missing sentence is "without the need to prove the element of guilt", so as a result the plaintiff who demands compensation for environmental damage must first prove that the occurrence of environmental damage stems from the business and/or activities of the defendant. So this change has eliminated strict liability and has become an obstacle for people/groups of people who feel that their environment is polluted.

The definition of corporation according to MA RI Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations is an organized group of people and/or assets, either legal entities or non-legal entities. Corporations are one of the legal subjects regulated in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH). This means that corporations are recognized as the subject of environmental crimes, considering that the law regulates criminal provisions related to the environment. In this regard, theoretically it is known that there are two motives for corporate crime, namely:

- a. The purpose of the corporation is to obtain the maximum possible profit which is manifested in individual characteristics;
- b. The emergence of contradictions, corporate goals with the needs of competitors, the state, society, workers, and consumers.

Some examples of environmental crimes involving corporations are the environmental pollution case in Rancaekek and the Lapindo mud case. The environmental pollution case in Rancaekek began in 2015, the emergence of a lawsuit from the West Java Walhi,

Paweling, and LBH Bandung against the Sumedang Regent's Decree in 2014, with the problem of disposing of toxic and hazardous liquid waste from the industrial sector, which was allegedly carried out by a textile factory located around the river. Cikijing, Rancaekek District.

The environmental NGO Greenpeace concluded that the economic losses due to waste pollution amounted to IDR 11.4 trillion, which included losses to agriculture, plantations, livestock, fisheries, health, losses due to loss of water services, decreased air quality, lost income, and estimated remediation costs. polluted land.

The report, which is based on a study in 4 villages affected by the waste disposal, revealed that losses in the agricultural sector reached IDR 841,741,893,000. From the plantation sector, the loss reached Rp. 812,184,000, calculated from the value of plantation productivity and the costs to be incurred by farmers for fertilizers and others. Meanwhile, the fishery sector suffered heavy losses because productivity fell 100 percent because polluted river water prevented fish cultivators from operating. Even if there are those who are still cultivating, the fish produced are not suitable for consumption. Losses from the fishery sector are estimated at Rp. 10,525,500. Furthermore, Greenpeace stated about the health losses experienced by the community, namely residents suffering from itching and skin diseases. If calculated financially, the residents' efforts to regain health reached Rp. 815,070,500,400. Disposal of waste in the Cikijing River, which is actually a source of water for residents, is then polluted and the water cannot be used. The loss of water services is estimated at Rp288,929,984,400. The community also

experienced a loss of income due to the disruption of their livelihoods, estimated at Rp 7,341,674,036.

The Sumedang Regency Government was judged to be negligent/guilty of the decision to issue permits for the disposal of liquid waste (IPLC) into the Cikijing River to three large factories, namely PT Ktx, PT Five STI and PT Insan SI. KM. PTUN Judge Nelvi C, stated that the three licenses for the Disposal of Liquid Waste (IPLC) from the Sumedang Regency Government for PT Ktx, PT Five STI and PT Insan SI must be immediately revoked. If the Sumedang Regency Government and the three factories violate this decision, they can immediately be charged with a criminal offense.

Sutan Remy Sjahdeini argues that it is necessary to apply the concept that the management and the corporation are both perpetrators of criminal acts and both must bear criminal responsibility in corporate crimes, which are based on the following:

- a. If criminal liability is only imposed by the management, it will be unfair to the people who experience losses, because this means that the management is considered to be carrying out their actions not on behalf of the corporation, even though the intention is to profit or avoid corporate financial losses.
- b. If the criminal responsibility is only on the corporation, while the management is not obliged to be responsible, then this method creates the potential for the management to shift the responsibility. In other words, the management can always take cover behind the corporation (legal entity), to avoid responsibility, in fact the act is not an act of personal

interest/personal interest, but is an act for the benefit of the corporation.

- c. The imposition of criminal responsibility on the corporation may be indirectly (doctrine of vicarious liability), responsibility for criminal acts committed by someone who is charged to another party, in the case of criminal liability, the corporation is transferred its criminal responsibility to the corporation. The obligation of criminal liability to corporations is possible to be carried out vicariously because corporations/business entities cannot carry out legal actions on their own. This means that all legal actions that are right or wrong, both in the civil field and those regulated by criminal provisions, are carried out by the human element, namely the management of the corporation.

Barda Nawawi Arief, stated the types of crimes against corporations:

- a. Financial Sanction (fines, increased tax burden, etc.)
- b. Structural Sanctions
- c. Restriction
Entrepreneurial activities
(restriction of activities, corporate dissolution)
- d. Stigmatizing Sanctions
- e. Considering that a corporation or company is a "good will", it is in line with Brickey's opinion that: "...an announcement of the judge's decision (publication), is a sanction that every corporation is worried about..." this will have a deterrent effect, especially if this corporation partners with international corporations.

In January 2020, there was a breakthrough by the Ministry of Environment (KLHK) which detained the

President Director of PT.NTS in Bekasi with the initials NS who was suspected of polluting and would be subject to additional sanctions for restoring the polluted environment due to B3 waste (hazardous, toxic materials); The author considers this a breakthrough because even though the corporation has been referred to as a legal subject, generally the one who gets criminal punishment is the corporation; Regarding the imposition of a crime on environmental pollution, whether the corporate management (eg director) or the corporation is being punished is still a debate in Indonesia, one of which is the assumption that if only the director is convicted, the corporation has the potential to damage/violate, whereas if it is only a corporation then it is a legal subject (natural person) does not get a deterrent effect, whereas if both of them raise doubts whether it means that 2 (two) legal subjects are different between people and corporations. Defendant NS has submitted a pretrial to the Central Jakarta District Court but was rejected, then the District Court's Decision ... on this case the defendant was sentenced to one year probation, and if the fine of 150,000,000 is not paid, it will be replaced with one year imprisonment. Our reality is that in Indonesia there is still a lack of resources to treat medical waste which is included in B3 waste, this is recognized by the Ministry of Environment and Forestry.

Even though corporations are basically late in having regulations on environmental management which have basically become an effort to reduce pollution, not all corporations do this, because it consumes excessive costs and requires a lot of energy sources, which can be considered only as unnecessary expenses. So that corporations are sometimes reluctant to carry out or

implement these regulations. It is unfortunate that there is a lack of awareness of the dangers caused by environmental pollution which corporations do not respond to. Pollution in one area will have an impact on other areas and it is interconnected with one another. So the loss is felt not only in one area but in several areas with a fantastic total value, it is undeniable that the lives of the surrounding community are also threatened due to the pollution, lost livelihoods, polluted natural resources, then a crisis occurs in the area due to pollution caused by pollution. occur. And it has become a very serious problem because natural resources have been polluted and will be damaged / nothing else can be produced. The environment can affect many aspects of the survival of human life. Hopefully in the future, corporate parties will be more aware of the importance of sustainable development in a comprehensive manner, not just pursuing profit.

D. CONCLUSION

Environmental pollution is a big problem for the sustainability of human life. The environment itself is the source of human life. A polluted environment will harm human survival, or reduce the quality of health. That is the importance of the criminal justice system and all its law enforcers are expected to protect the environment. Corporations must be obedient and thorough and take this matter seriously regarding environmental management regulations in their vicinity. And there must also be severe sanctions against environmental polluters, especially as a result of corporate crime and include all parties involved in the corporation, as well as providing a deterrent effect. The state should be firm in following up on corporate crimes in

environmental pollution, such as the breakthrough by the Ministry of Environment (KLHK) which detained the President Director of PT.NTS in Bekasi. As a closing of the Job Creation Law, which seems to adhere to a civil case proof system, it is feared that it will make it difficult to prove environmental pollution cases.

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